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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,322	12/17/2001	Ewald Duermeier	10537/191	2274

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KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

MICHALSKY, GERALD A

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/023,322

Applicant(s)

DUERMEIER ET AL.

Examiner

Gerald A. Michalsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by either Yamamoto et al or Whitley. Regarding claim 8, one of the walls of Yamamoto et al which contains one of holes 12 and 14 is read as the recited "wall". Regarding claim 8, vertical partition 78 of Whitley is read as the recited "wall". Notches 134 of Whitley are read as at least a portion of the "return line".

3. Claims 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al.

4. Claims 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitley.

5. Claims 1-2, 4, 8, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by any one of Ganachaud et al, King et al, Shimamura et al, or Ehrman et al.

Regarding claim 8, wall 9 of Ganachaud et al is read as the recited "wall". In Ganachaud et al, port 13 is read as at least a portion of the "return line". Regarding claim 8, diversion baffle 70 of King et al is read as the recited "wall". Regarding claim 8, one of partition walls 53 and 54 of Figure 7 of Shimamura et al is read as the recited

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"wall". Regarding claim 8, barrier wall 52 of Ehrman et al is read as the recited "wall".

In Ehrman et al, the port controlled by discharge valve 60 is read as a "return line".

Even though the filing dates of Shimamura et al and Ehrman et al are after the filing date of the foreign priority papers, applicants cannot rely upon the foreign priority papers to overcome the rejections based upon Shimamura et al and Ehrman et al because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

6. Claims 5-7 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by either King et al or Ehrman et al.

7. Claim 12 is rejected under 35 U.S.C. 102(e) as being anticipated by any one of Ganachaud et al, King et al, or Shimamura et al.

8. Claims 1-12 are further rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation of "at least one aeration line" and "at least one de-aeration line" in claim 1, lines 3-4 and "a return line" in claim 1, line 12 is inaccurate. In the embodiments disclosed, the "aeration" line, "de-aeration" line, and "return" line are all the same line. To recite these lines in claim 1 (and in the dependent claims) as three different lines is inaccurate and confusing.

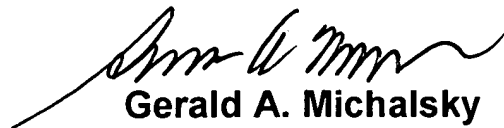
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald A. Michalsky whose telephone number is (703) 308-1049. The examiner can normally be reached on M-F 5:30 AM - 2 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Buiz can be reached on (703) 308-0871. The fax phone

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numbers for the organization where this application or proceeding is assigned are (703) 308-7765 for regular communications and (703) 308-7765 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.



Gerald A. Michalsky
Primary Examiner
Art Unit 3753

GM
May 23, 2003